IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.103 of 2000

Date of decision : July 13, 2007

State of H.P. **…Appellant.**

Versus

Ravi Kumar **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Ashok Chaudhary, Additional Advocate General.

For the Respondent : Mr. Subhash Sharma, Advocate.

Surjit Singh, Judge (Oral)

Respondent was sent up for trial for offences under Sections 323, 324 and 506 IPC for allegedly causing injuries to PW-1 Sumeet Kumar, by means of a *Darat,* and also for intimidating him.

2. During the course of trial, the respondent took the plea that in fact PW-4 Mukesh Kumar @ Sanju and injured Sumeet Kumar (PW-1) assaulted him and that PW-4 Mukesh Kumar @ Sanju was holding a *Darat* and he aimed a blow at him and while protecting himself he went behind injured Sumeet Kumar and the blow landed on his (Sumeet Kumar's) arm resulting in clean-cut wound, as noticed by PW-2 Dr. Madhu Sood. He stated that as a result of the assault on him he sustained a number of injuries and that those injuries were noticed on his person when he was examined by a doctor on 19.4.1997.

3. Trial Court noticed some contradictions in the testimony of the injured and other witnesses and held that the contradictions made

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Whether reporters of the local papers may be allowed to see the judgment?

the prosecution version doubtful. Consequently, the trial Court acquitted the respondent.

4. I have heard the learned Additional Advocate General as also the learned counsel for the respondent and perused the record. Injured's case, as per his statement in the Court as PW-1, is that when he was studying in a field, respondent came there armed with a *Darat* and asked him why he was sitting in his field and then he dealt a blow of *Darat* on his arm resulting in an injury. The injury, as per the testimony of PW-2 Dr. Madhu Sood, measures 2.5 cm X 0.1 cm X 0.25 cm. The respondent is testified to have then dealt some more blows with the reverse side of the *Darat.* It is further stated that when he (injured) cried for help PW-4 Mukesh Kumar @ Sanju came there and rescued him.

5. PW-4 Mukesh Kumar @ Sanju stated that when he reached the spot on hearing the cries of Sumeet Kumar, he noticed that Sumeet Kumar was bleeding from his right arm and that the respondent was attacking him with a *Darat.* He stated that he rescued injured Sumeet Kumar (PW-1). Neither of the two witnesses stated that when alarm was raised by PW-1 Sumeet Kumar, his father reached the spot. PW-1 Sumeet Kumar stated that only PW-4 Mukesh Kumar @ Sanju reached the spot and rescued him. He did not name any other person. PW-4 Mukesh Kumar @ Sanju stated that on hearing cries, PW-3 Vipin Kumar, an uncle of Sumeet Kumar, and PW-5 Joginder Prashad, the father of the injured, also reached the spot. PW-3 Vipin Kumar stated that he was attracted to the spot when PW-4 Mukesh Kumar @ Sanju called him by gesture. PW-4 Mukesh Kumar @ Sanju does not say that he called him by gesture, though he says that he reached the spot. PW-4 Mukesh Kumar @ Sanju has stated

that when Vipin Kumar reached the spot respondent had already fled, but PW-3 Vipin Kumar says that the respondent was still there and was giving beating to PW-2 Sumeet Kumar.

6. PW-5 Joginder Prashad, the father of injured Sumeet Kumar, is not named as a witness either by PW-1 Sumeet Kumar or PW-3 Vipin Kumar, but he says that he too reached the spot in the company of his brother PW-3 Vipin Kumar and saw the respondent with a *Darat* in his hand.

7. It appears that PW-3 Vipin Kumar and PW-5 Joginder Prashad were nowhere on the spot and they did not witness the occurrence.

8. According to the prosecution, *Darat* Ex. P-1 was produced by the respondent on 19.4.1997 in the presence of PW-4 Mukesh Kumar @ Sanju and one Krishan Kumar and the same was taken into possession vide Memo. Ex. PW-4/A. However, PW-4 Mukesh Kumar @ Sanju, when asked in the course of his cross-examination as to who produced the *Darat*, expressed ignorance, meaning thereby that the prosecution version about the production of *Darat* by the respondent is doubtful. The other attesting witness of Memo. Ex. PW-4/A namely Krishan Kumar was not examined by the prosecution.

9. Five injuries were noticed on the person of the respondent also when he was got medically examined by the Police on 19.4.1997. The injuries were opined by PW-6 Dr. Alok Thapa to be 2 to 4 days old. Even though all the injuries are simple in nature and have been opined to have been caused by means of a blunt weapon but still the prosecution owed an explanation how these injuries were sustained by the respondent, especially when the injuries sustained by the victim of

the occurrence, namely PW-1 Sumeet Kumar, are also minor and just superficial.

10. In view of the abovestated position, the view taken by the learned trial Court cannot be stated to be perverse. Hence, the appeal is dismissed.

11. Appeal stands disposed of.

July 13, 2007(sd) **(Surjit Singh), J**